

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

JOHN GONZALES GARCIA,
Institutional ID No. 2007276

Plaintiff,

v.

DR. TERRY ROSE,

Defendant.

No. 5:19-CV-00005-H

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff filed this Section 1983 action on January 14, 2019, alleging that Defendant Dr. Terry Rose denied him adequate medical care while he was incarcerated at the Smith Unit of the Texas Department of Criminal Justice (TDCJ).¹ Dkt. No. 1. United States Magistrate Judge D. Gordon Bryant, Jr., conducted preliminary screening and recommended that the Court dismiss Plaintiff's complaint with prejudice for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1). Dkt. No. 23. Plaintiff sought, and was granted, an extension of time to file objections to Judge Bryant's report and recommendation. However, he filed no objections, and the time to do so has passed.

The Court has examined the record and reviewed the findings, conclusions, and recommendation for plain error. Finding none, the Court accepts and adopts the findings, conclusions, and recommendation of the United States Magistrate Judge. Plaintiff's

¹ Plaintiff's original complaint included other claims regarding incidents that allegedly occurred in other units. Those claims were severed and transferred to appropriate courts for the divisions where those units are located. *See* Dkt. No. 10.

complaint and the claims against Dr. Terry Rose are therefore dismissed with prejudice for failure to state a claim.


This dismissal will count as a qualifying dismissal under 28 U.S.C. § 1915(e)(2)(B) and 1915A(b)(1), and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

Dismissal of this action does not release Plaintiff from the obligation to pay any filing fee previously imposed. *See Williams v. Roberts*, 116 F.3d 1126, 1128 (5th Cir. 1997).

Plaintiff is advised that if he appeals this order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA,² and he must submit an application to proceed *in forma pauperis* and a 6-month certificate of inmate trust account at the same time he files his notice of appeal.

All relief not expressly granted and any pending motions are denied.

So ordered on April 3, 2020.



JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE

² Prison Litigation Reform Act of 1995.